

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Abubakr Mohamed	*
(A46-133-250)	*
Plaintiff,	*
	*
-against-	*
	*
Federal Bureau of Investigation (FBI);	*
	*
Robert S. Mueller, III, Director, FBI;	*
	*
Mark J. Mershon, Asst. Director in Charge, New York Field Office, FBI	*
	*
US Citizenship and Immigration Services (USCIS);	*
	*
Andrea Quarantillo, District Director, New York District, USCIS;	*
	*
District Director, USCIS Omaha Field Office,	*
	*
Michael Chertoff, Director, US Department of Homeland Security	*
	<u>ECF CASE</u>
Defendants.	*
	No. 07 CV 10489
	(SHS)(DCF)

COMPLAINT FOR MANDAMUS AND/OR MANDATORY INJUNCTION

I. INTRODUCTION

1. This complaint seeks an order commanding the defendants to adjudicate the plaintiff's N-400 application (Application for Naturalization) within a reasonable time. The defendants' failure to complete processing on the

plaintiff's N-400 (Case No. LIN*000597498), which was filed on October 17, 2003, is clearly a violation of the Immigration and Nationality Act and the Administrative Procedures Act. The Defendants have violated this ministerial and non-discretionary duty to adjudicate plaintiff's application within a reasonable period of time.

2. The plaintiff seeks the following relief:

(1) Mandamus relief under The Mandamus Act, 28 U.S.C. §1361, which is invoked to compel an officer or employee of the USCIS, Federal Bureau of Investigation, or another governmental agency to perform a non-discretionary duty owed to a party; and/or

(2) Mandatory injunction pursuant to the Administrative Procedures Act ("APA"), 5 USC §706(1), pursuant to which this court may compel agency action unreasonably withheld or delayed, and/or

(3) Declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

II. PARTIES

3. Plaintiff ABUBAKR MOHAMED (Alien number 46-133-250) is a citizen of Sudan who resides at 166 West 129th Street, Apt 65, New York, NY 10027. On October 17, 2003 he filed an application for naturalization (form N-400) with

US Citizenship and Immigration Services ("USCIS") to become a US citizen through naturalization. Said application was filed with USCIS' Lincoln Service Center in Lincoln, Nebraska. On March 22, 2004, he was interviewed on his application by USCIS at its local district office in Omaha, Nebraska (at that time the local office closest to his place of residence) and was told at the conclusion of the interview that his application would likely be approved. However, since that time, his application has remained pending. Upon information and belief, the cause of the extended delay is the pending status of the "Name Check" that must be completed by the FBI prior to the final approval of any application for naturalization.

4. Defendant FEDERAL BUREAU OF INVESTIGATION ("FBI") is an agency of the United States government within the Department of Justice, which is charged with performing the special security check known as the "Name Check" on all applicants for naturalization.

5. Defendant ROBERT S. MUELLER, III is the Director of the Federal Bureau of Investigation ("FBI"), which is charged with performing a special security check known as the "Name Check" on all applicant for naturalization.

6. Defendant Mark J. Mershon is the Assistant Director in Charge, charged with oversight of the New York Field Office of the Federal Bureau of Investigation ("FBI"), which is charged with performing a special security check known as the "Name Check" on all applicants for naturalization.

7. Defendant US CITIZENSHIP AND IMMIGRATION SERVICES ("USCIS") is an agency within the Department of Homeland Security within the United States government. USCIS' offices are located at 26 Federal Plaza, New York, NY 10278. USCIS is charged with adjudicating applications for Naturalization.

8. Defendant ANDREA QUARANTILLO is the District Director of the US Citizenship and Immigration Services' New York Office, located at 26 Federal Plaza. USCIS' New York Office is charged with adjudicating applications for naturalization of aliens who reside within the New York District, where the plaintiff now resides.

9. Defendant DISTRICT DIRECTOR, OMAHA FIELD OFFICE is the District Director of the US Citizenship and Immigration Services' Omaha Nebraska Office, located at

1717 Avenue H, Omaha, NE 68110. USCIS' Nebraska Office is charged with adjudicating applications for naturalization of aliens who reside within the Omaha Nebraska District, such as the plaintiff did at the time that he filed his application for naturalization in 2003.

10. Defendant MICHAEL CHERTOFF is the Director of the US Department of Homeland Security, which encompasses US CITIZENSHIP AND IMMIGRATION SERVICES; as director of the Department of Homeland Security, defendant CHERTOFF has oversight over and policy-setting managerial capacity over USCIS.

III. NATURE OF THE ACTION/FACTUAL ALLEGATIONS

11. On October 17, 2003 Plaintiff, a Lawful Permanent Resident of the US, filed form N-400 with USCIS' Lincoln Service Center seeking naturalization to become a US citizen. On March 22, 2004, he was interviewed on his application by USCIS at its local district office in Omaha, Nebraska and was told at the conclusion of the interview that his application would likely be approved. However, since that time, his application has remained pending.

12. In or about July of 2007, the plaintiff called USCIS' National Customer Service Center [1-800-375-5283] to inquire on his long-pending N-400. On July 19, 2007, USCIS sent the plaintiff a letter informing him that the processing of the N-400 had been delayed due to the fact that a background check had not been completed. A copy of that letter is attached as **EXHIBIT A**.

13. In September, 2007, plaintiff's counsel, the undersigned, made an in-person inquiry at USCIS' New York District office at 26 Federal Plaza to ascertain the status of the N-400 application. A USCIS information officer informed Plaintiff's counsel that the application was pending because the FBI "name check," a special security check that must be completed by the FBI prior to the final approval of any application for naturalization, had not been completed.

14. Plaintiff now seeks to compel the FBI and the USCIS to complete their adjudication of the N-400. Specifically, the plaintiff seeks to compel the FBI to complete the name check so that there will be no obstacle to USCIS rendering a final decision on the N-400.

IV. SUBJECT MATTER JURISDICTION

15. Subject matter jurisdiction is pursuant to 28 U.S.C. § 1331 (Federal Question). A federal question is presented under § 1331 where an action "arises under" federal law. See, e.g., Bracey v. Board of Education, 368 F.3d 108 (2nd Cir., 2003); Cordoba v. McElroy, 78 F. Supp.2d 240 (S.D.N.Y., Kaplan, J.). An action is deemed to arise under federal law where "the statute creates or is a necessary element of the cause of action or the plaintiff would prevail if the statute were construed in one way and lose if it were construed another." Id. A federal question is presented here as plaintiff's cause of action here is based wholly on rights created by federal statutes, to wit, the Immigration and Nationality Act (Title III, Chapter 2) and the Administrative Procedures Act ("APA"), and whether plaintiff will prevail depends wholly on how relevant provisions of those statutes are interpreted.

Specifically, the Federal question herein arises under the following Federal Statutes:

- 8 USC §310 - §320 provides that qualified aliens may apply for naturalization.
- Although those Section leaves the decision whether to grant naturalization at the discretion

of the government, that statute implicitly imposes on the government the non-discretionary duty to render decisions on applications in a timely and orderly manner.

- 5 USC § 555(b) (APA) affirmatively imposes on all federal administrative agencies the duty to take action within a reasonable amount of time on matters that are before the agency.
- 5 USC § 706(1) (APA) authorizes the courts to compel agency action unreasonably withheld by administrative agencies, such as compelling defendants to employ the proper procedures which were not employed in this case.

V. VENUE

16. Venue lies within the Southern District of New York pursuant to 28 U.S.C. §1331(e)(3) as the plaintiff resides in New York County.

VI. REQUEST FOR RELIEF

17. Plaintiff asks this court to find the defendants in violation of the Immigration and Nationality Act, Section 245, as well as the Administrative Procedures Act,

5 U.S.C. § 555(b) in that the defendants have failed to adjudicate his N-400 in a timely manner, causing him injury.

WHEREFORE, Plaintiffs request the court to grant the following relief (see also proposed order, **EXHIBIT B**):

- 1- Accept and maintain continuing jurisdiction in this action;
- 2- Instruct the defendants to complete the name check forthwith;
- 3- Complete all other processing of the application and render a decision within a reasonable period of time, not to exceed 90 days of the date of filing of this complaint;
- 4- Award plaintiffs the costs of this action, including fair and reasonable attorney's fees as provided in the Equal Access to Justice Act;
- 5- Provide such relief as the court may deem proper and appropriate.

Respectfully submitted,

Daniel Shabasson **DS5740**
POLLACK, POLLACK, ISAAC
& DECICCO
225 Broadway, Suite 307
New York, NY 10007
(212) 233-8100
DSS@PPID.COM

Dated: New York, NY
November 20, 2007

VERIFICATION

Pursuant to 28 U.S.C. § 2242, the undersigned certifies under the penalty of perjury that he has reviewed the foregoing petition/complaint and that the facts stated therein concerning Petitioner/Plaintiff are true and correct. _____

Daniel Shabasson, Esq.

U.S. Department of Homeland Security

Jacob Javits Federal Building

26 Federal Plaza

New York, NY 10278

U.S. Citizenship
and Immigration
Services

Thursday, July 19, 2007

ABUBAKR MOHAMED
166 W 129TH STREET APT 65
NEW YORK NY 10027

Dear Abubakr Mohamed:

On 07/17/2007 you, or the designated representative shown below, contacted us about your case. Some of the key information given to us at that time was the following:

Caller indicated they are:	Applicant or Petitioner
Attorney Name:	Information not available
Case type:	N400
Filing date:	10/17/2003
Receipt #:	LIN*000597498
Beneficiary (if you filed for someone else):	Information not available
Your USCIS Account Number (A-number):	A046133250
Type of service requested:	Outside Normal Processing Times

The status of this service request is:

The processing of your case has been delayed. A check of our records establishes that your case is not yet ready for decision, as the required investigation into your background remains open.

Until the background investigation is completed, we cannot move forward on your case. These background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. We will make every effort to make a decision on this case as soon as the background checks are complete. If you do not receive a decision or other notice of action from us within 6 months of this letter, please contact us by calling our customer service number provided below.

If you have any further questions, please call the National Customer Service Center at 1-800-375-5283.

Please remember: By law, every person who is not a U.S. citizen and who is over the age of 14 must also notify the Department of Homeland Security within 10 days from when they move (persons in "A" or "G" nonimmigrant status are exempt from this requirement). If you have moved, please complete a Form AR-11 and mail it to the address shown on that form. If you do not have this form, you can download it from our website or you can call the National Customer Service Center at 1-800-375-5283 and we can order one for you. If you move, please call us with your new address information as soon as your move is complete. If you have already called us and given us this information, you do not need to call again.

U.S. Citizenship and Immigration Services

JUDGE STEIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

07 CV 10489

Plaintiff,

Abubakr Mohamed

-v-

Federal Bureau of Investigation, et al.

Defendant.

Case No. 07 CV 10489

Rule 7.1 Statement



Pursuant to Federal Rule of Civil Procedure 7.1 [formerly Local General Rule 1.9] and to enable District Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for

Daniel Shabasson

(a private non-governmental party)

certifies that the following are corporate parents, affiliates and/or subsidiaries of said party, which are publicly held.

None.

Date: November 20, 2007



Signature of Attorney

Attorney Bar Code: 055740

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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(A46-133-250)	*
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Plaintiff,	*
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Robert S. Mueller, III, Director, FBI;	*
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Mark J. Mershon, Asst. Director in Charge, New York Field Office, FBI	*
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US Citizenship and Immigration Services (USCIS);	*
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Andrea Quarantillo, District Director, New York District, USCIS;	*
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District Director, USCIS Omaha Field Office,	*
	*
Michael Chertoff, Director, US Department of Homeland Security	*
	*
Defendants.	* No. 07 CV 10489 * (SHS)(DCF)

ORDERECF CASE

THIS MATTER having come before the court upon the summons and complaint of the plaintiff, Abubakr Mohamed, seeking a writ of Mandamus pursuant to 28 U.S.C. § 1361 and/or a mandatory injunction pursuant to the Administrative Procedures Act, 5 U.S.C. § 555(b), the

Court, having considered the submissions of the parties and the pleadings and proceedings herein, finds as follows:

IT IS ORDERED, ADJUDGED, AND DECREED, that:

(1) The defendants shall complete all background checks and complete all processing of the plaintiff's application for naturalization within _____ days of this order.

(2) The plaintiff is hereby awarded _____ in attorney's fees pursuant to the Equal Access to Justice Act.

SO ORDERED:

Dated: New York, NY
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